IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2448 OF 2006

Pravin Surendranarayan Vatsa, Aged about 42 years, Residing at 10/35, Ward No.1, Yogmaya Mandir, Mehrauli, New Delhi – 110 030. ... Petitioner

Vs.

State of Maharashtra [At the instance of D.C.B.C.I.D. Unit 2, Satrasta vide, their C.R. No.6/04.]. ... Respondents

Mr. Siddarth Luthra with Mr. S. Marwadi and Mr. Amit Sharma for the bpetitioner.

Mr. Raja Thakare, Spl. Public Prosecutor with Mr. S.R. Borulkar, Public Prosecutor and Ms. M.H. Mhatre, A.P.P. for the State.

CORAM : SMT. RANJANA DESAI, J.

DATED : 15TH DECEMBER, 2006.

ORAL JUDGMENT :-

Rule. Respondents waive service. By consent of the parties, taken up for hearing forthwith.

1. The petitioner is a permanent resident of Delhi. He is an employee of father of one Narendra Goel.

2. Accused Narendra Goel was arrested on 2/9/2003 in connection with murder of one Asha Goel, a Canadian citizen, which took place in

Bombay between the night of 22/8/2003 and 23/8/2003. He was released on bail on 8/12/2005. According to the petitioner, at the time of applying for bail, accused Narendra Goel had taken the defence of alibi. According to the accused, at the time of the murder, he was in Delhi.

3. It is the case of prosecution that accused Narendra Goel has undergone Lie Detection test, Brain Mapping test and Narco Analysis test, which were conducted at the Forensic Science Laboratory at Bangalore. He has made a revelation that the petitioner had travelled on his ticket and he himself had travelled from Bombay to Delhi after the murder. According to the prosecution, in view of this, the petitioner was interrogated. However, the petitioner did not co-operate with the investigation. The prosecution, therefore, filed an application, before the Addl. Metropolitan Magistrate, 37th Court, Esplanade, Bombay, praying for permission to conduct Lie Detection test on the petitioner with the help of Forensic Science Expert in Forensic Science Laboratory at Bangalore, and praying that for that purpose, a notice be issued to him to appear before the court. The learned Magistrate by his order dated 7/7/2006 rejected the said application. By this order, the learned Magistrate disposed of two similar applications, one in respect of witness Mr. Goenka and the other in respect of the present petitioner. While he granted the application in respect of witness Goenka, he

rejected the application in respect of the petitioner.

4. The prosecution filed a revision application in the Sessions Court at Bombay. The Sessions Court by its order dated 29/9/2006 allowed the said revision application. Hence, this petition is filed by the petitioner.

5. I have heard, at considerable length, Mr. Luthra, the learned senior counsel appearing for the petitioner. Mr. Luthra contended that the investigation is complete; charge-sheet is filed; final report under section 173 of the Code of Criminal Procedure (for short, "the Cr.P.C.") has been submitted. It was, therefore, not open to the prosecution to make such an application because after filing of charge-sheet, investigation can be conducted only on discovery of new facts. He submitted that there is no discovery of new facts and the application filed by the prosecution is totally misconceived.

6. Mr. Luthra further contended that this is an attempt on the part of the prosecution to intimidate the petitioner who may be cited as a defence witness by accused Narendra Goel. Mr. Luthra took me through the documents annexed to the petition and contended that the defence of alibi was raised by accused Narendra Goel at the earliest

and, it is this defence which is sought to be marginalized by the prosecution by pressurizing the petitioner, who is likely to be cited as a defence witness. He submitted that this attempt should not be allowed to succeed. Mr. Luthra also contended that the petitioner fears that ultimately he may be falsely involved in this case. However, it must be noted that in the petition, this contention is not raised. It was only advanced by Mr. Luthra in the court. Mr. Luthra also contended that the prosecution has not filed the recordings of the Narco Analysis test of accused Narendra Goel and, therefore, the prosecution is not relying on it and, hence, there is no question of submitting the petitioner to Lie Detection test on that basis. Lastly, he contended that the order passed by the learned Magistrate being an interlocutory order, the learned Sessions Judge could not have interfered with it. Mr. Luthra also contended that the learned Sessions Judge has merely granted the application of the prosecution on the ground of parity because similar application in respect of witness Goenka was granted. Mr. Luthra submitted that the approach of the learned Sessions Judge is illegal. He submitted that there is total non-application of mind to the settled principles of law and, hence, this court should set aside the impugned order.

7. On the other hand, Mr. Thakare the learned Special Public

Prosecutor contended that no interference is necessary with the impugned order. He submitted that the police are dealing with a serious and sensitive case. The investigating agency may, therefore, be given a fair chance to investigate this gruesome crime. In this connection, Mr. Thakare relied on the judgment of this court in ***Arun Gulab Gavali v. State of Maharashtra and Ors., 2006 Cri.L.J. 2615***. Mr. Thakare also drew my attention to another judgment of this court in ***Subhash Ranchoddas Agrawal v. Mr. J.K. Hargude & Ors., (Criminal Writ Petition No.296 of 2006) delivered on 31/8/2006 by the Division Bench of this court (J.N. Patel & Smt. Roshan Dalvi, JJ.)***. He submitted that this writ petition arises out of the same case and in this judgment, this court has put its seal of approval on the request for further investigation made by the investigating agency. He submitted that it is not open for the petitioner to re-agitate the same issues.

8. I have given anxious consideration to the submissions advanced by the learned counsel for the petitioner. Undoubtedly, the instant crime is serious. However, the seriousness of the crime by itself will not persuade this court to permit the investigating agency to carry out investigation if it is not permissible in law. But, in the instant case, after considering all the circumstances and the relevant provisions of law, I am unable to come to the conclusion that the request of the prosecution

to submit the present petitioner to Lie Detection test is unreasonable or illegal. The contention of the petitioner that fresh investigation as per section 173 of the Cr.P.C. after filing of charge-sheet can be undertaken with the permission of the Magistrate only if there is discovery of new facts and the reliance placed by the petitioner on the judgment of the Supreme Court on ***Ram Lal Narang and another v. State (Delhi Administration), AIR 1979 SC 1791*** should not detain me because the said argument has been extensively dealt with by this court in a matter arising out of the same crime in its judgment in ***Subhash Agrawal's case (supra)***. This court has observed that after the charge-sheet was filed by the investigating officer under section 173(2) of the Cr.P.C., further information, fresh clues regarding complicity of the petitioner therein came to be gathered, therefore the investigating officer sought permission of the learned Magistrate to carry out further investigation in the matter. This court observed that pursuant to further investigation, fresh material was collected which, prima facie, makes out complicity of the suspect in the crime. After referring to ***Ram Lal' s case (supra),*** this court held that there is no legal impediment in the way of the investigating agency to carry out further investigation and collect additional/fresh material against the accused persons if it is detected even subsequent to filing of the charge-sheet.

9. It is true that Narendra Goel revealed the name of the petitioner after his arrest on 1/10/2005. It is also true that thereafter final report was submitted under section 173 of the Cr.P.C. It is the case of the prosecution that the petitioner was tried to be interrogated but he did not cooperate and it is against the backdrop of these facts, that the prosecution filed the instant application. It is stated in the application that the petitioner was hiding facts. As to what other clues the prosecution had gathered, the prosecution cannot be compelled to disclose. But the statement of Narendra Goel and subsequent non-cooperation of the petitioner seems to have prompted the prosecution to prefer the application for permission to carry out the petitioner's Lie Detection test. The prosecution cannot be faulted for it. The judgment of the Supreme Court in ***Ramlal's case (supra)*** does not help the petitioner.

10. So far as the submission of the petitioner that the incident is dated 23/8/2003 and that the accused Narendra Goel was released on bail on 8/12/2005 and that there is considerable delay on the part of the investigating agency in making the present application and that they have not carried out any investigation during the interregnum is concerned, in my opinion, in the peculiar facts and circumstances of the case, it is not appropriate to express any opinion at this juncture on this

issue. In my opinion, in a case of this type, no fetters can be put on the right of the police to carry out investigation. Besides, it is pertinent to note that it is not the case of the petitioner in the petition that the police are trying to implicate him or likely to arrest him. In fact, in ground (G) of the petition, the petitioner has stated that the prosecution is trying to intimidate the petitioner, who may be cited as a defence witness in respect of accused Narendra Goel's defence of alibi. In ground (J), it is again stated that the prosecution is trying to fill up the lacuna and denying the right of the accused to have free and fair trial. Therefore, prima facie, it appears to me that this is a case where it is Narendra Goel who has put up the present petitioner to create an impediment in the investigation.

11. I may usefully refer to the judgment of this court in ***Arun Gavali' s case (supra)*** where this court was considering somewhat similar fact situation. This court considered the right of the investigating agency to carry out proper investigation to unearth the necessary facts disclosing the evidence in support of the accusation against any person and held as under :

> *"As regards the prayer relating to the direction against taking the petitioner to Bangalore, it is to be noted that the investigating machinery is duly empowered to secure*

> *presence of any person having knowledge of an offence under investigation, either directly or indirectly, or having knowledge of the facts which could assist the investigating machinery to unearth the necessary facts disclosing the evidence in support of the accusation against any person being involved in the offence or in relation to the offence itself and being so, it eventually follows that the investigating machinery can require even a witness to appear at different places where the investigation or part of investigation is required to be carried out. Of course, any expenditure incurred in such appearance of the witness, it will have to be provided by the investigating machinery. But it cannot be said by any person called for assisting the investigating machinery that he would dictate his terms regarding his appearance before the investigating machinery or that he could refuse to accompany the investigating machinery to a particular place or that investigation should be carried out at a particular place alone. It will be entirely in the discretion of the investigating machinery to deal with this aspect depending upon the facts and circumstances of each case and persons called upon to assist the investigating machinery in the course of investigation of an offence will have to assist the investigating machinery in that regard, and such assistance cannot be said to amount to denial of personal liberty. It is a duty of every person having knowledge or information regarding the offence to assist the investigating machinery. In fact, that is the essence of sections 160 and 161 of the Code of Criminal Procedure. Being so, the question of directing the respondents to forthwith withdraw the notice dated 16th November, 2005 for taking the petitioner at Bangalore does not arise at all."*

12. I respectfully concur with the view expressed by this court in the above judgment. Viewed in the light of the above, in my opinion, no

interference is necessary with the impugned order. Mr. Thakare at this stage on instructions from the officer states that it is not possible for him to state as to exactly on which day, the petitioner would be taken for the Lie Detection text but he states that the petitioner will be given sufficient advance notice. Mr. Marwadi states that the petitioner's advocate may be allowed to accompany the petitioner for the Lie Detection test. In this connection, the petitioner may make appropriate application before the trial court. The trial court may consider it in accordance with law.

13. Mr. Marwardi says that there is another Forensic Science Laboratory at Delhi. Mr. Marwardi submits that since the petitioner is a permanent resident of Delhi, he may be taken to the said Laboratory at Delhi. There is some substance in the submission of Mr. Marwadi. Hence, the prosecution may consider taking the petitioner for Lie Detection test at Delhi instead of Bangalore, if possible.

14. The petition is dismissed.

[SMT. RANJANA DESAI, J.]